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Attorneys for Defendant  
14 ULTA SALON, COSMETICS & FRAGRANCE, INC.

15 UNITED STATES DISTRICT COURT  
16 EASTERN DISTRICT OF CALIFORNIA  
17 SACRAMENTO DIVISION  
18

19 SARAH FRAZIER, an individual,

20 Plaintiff,

21 v.

22 ULTA SALON, COSMETICS, &  
23 FRAGRANCE, INC., a Delaware corporation  
and DOES 1-10, inclusive,

24 Defendant.  
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26  
27  
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Case No. 2:20-cv-01608-TLN-DB

**JOINT STIPULATION TO MODIFY THE  
INITIAL SCHEDULING ORDER;  
ORDER THEREON**

**Complaint filed: 08/11/2020**

**Amended Complaint filed: 09/10/2020**

1 Plaintiff Sarah Frazier (“Plaintiff”) and Defendant Ulta Salon, Cosmetics & Fragrance,  
2 Inc. (“Defendant”) (collectively, the “Parties”), by and through their respective counsel of record,  
3 hereby agree and respectfully stipulate as follows:

4 **WHEREAS**, Plaintiff filed her Complaint on August 11, 2020, but did not serve  
5 Defendant with this Complaint. Instead, Plaintiff filed a First Amended Complaint on September 10,  
6 2020 (ECF No. 5), and served Defendant with the First Amended Complaint on September 15, 2020,  
7 and Defendant answered on October 20, 2020;

8 **WHEREAS**, on October 29, 2020, the Parties met and conferred regarding Plaintiff’s  
9 contention that Defendant’s Answer was deficient, and in turn, Defendant agreed to file an Amended  
10 Answer, and did so on November 20, 2020;

11 **WHEREAS**, on August 12, 2020, this Court issued its Initial Scheduling Order, which  
12 requires the Parties to complete discovery no later than 240 days after the last day that a defendant  
13 may answer the complaint (which here was October 20, 2020). Accordingly, the current discovery cut  
14 off is June 17, 2021 (making the deadline for either party to serve any further discovery requests May  
15 18, 2021).

16 **WHEREAS**, pursuant to Federal Rule of Civil Procedure (“FRCP”) 26(f), the Parties  
17 exchanged initial disclosure statements and documents on December 14, 2020. Thereafter, over the  
18 next five months, the Parties propounded and responded to written discovery requests, and met and  
19 conferred to resolve alleged deficiencies in the discovery responses, including serving amended  
20 discovery responses, as well as engaging in efforts to streamline Defendant’s search for Electronically  
21 Stored Information (“ESI”) pursuant to Plaintiff’s discovery request.

22 **WHEREAS**, on May 21, 2021, this Court issued its signed Order accepting Plaintiff’s  
23 and Defendant’s Joint Stipulation to Modify the Initial Scheduling Order (the “First Joint  
24 Stipulation”). Pursuant to the First Joint Stipulation, the discovery cut off was extended to December  
25 14, 2021.

26 **WHEREAS**, after obtaining the initial discovery extension, the Parties engaged in  
27 written discovery efforts and took depositions of available witnesses, but have yet to complete  
28

1 depositions. The Parties have attempted to set depositions, but have encountered issues locating  
 2 pertinent witnesses (namely, former employees of Defendant, including two of Plaintiff's former  
 3 managers) and have had issues with witness availability. Specifically, both Parties wish to take the  
 4 deposition of Tonja Springer, Plaintiff's former direct manager, and have diligently attempted to serve  
 5 Ms. Springer with a deposition subpoena, to which Ms. Springer appears to be actively avoiding  
 6 service of same. Additionally, Defendant took the first part of Plaintiff's deposition in July 2021, but  
 7 due to scheduling conflicts, have not been able to complete Plaintiff's deposition. Accordingly, the  
 8 Parties will not be able to complete these depositions and/or enforce the deposition subpoena for Ms.  
 9 Springer prior to the current discovery cut off on December 14, 2021, due to witness unavailability.

10 **WHEREAS**, the Parties have agreed to pursue early mediation of this matter in hopes  
 11 to reach a reasonable, global resolution of the lawsuit and to prevent any further need for further  
 12 written discovery, and trial preparation. However, the Parties have further agreed that prior to  
 13 submitting to early mediation, the Parties shall each take the limited depositions of Plaintiff and two  
 14 of Plaintiff's former managers (who are both former employees of Defendant). As described above,  
 15 due to witness unavailability, the Parties have not completed these depositions.

16 **WHEREAS**, good cause exists to modify the Court's scheduling Order as follows:

17 The district court is given broad discretion in supervising the pretrial phase of  
 18 litigation..." *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607 (9th Cir. 1992) (citation and  
 19 internal quotation marks omitted). "A schedule may be modified only for good cause and with the  
 20 judge's consent." Fed. R. Civ. P. 16(b)(4); see e.g. *Spiller v. Ella Smithers Geriatric Ctr.*, 919 F.2d  
 21 339, 343 (5th Cir. 1990) (court impliedly granted motion to modify scheduling order by allowing  
 22 summary judgment motion after pretrial motion cut-off date).

23 To establish "good cause," parties seeking modification of a scheduling order must  
 24 generally show that, even with the exercise of due diligence, they cannot meet the order's timetable.  
 25 *Johnson, supra*, 975 F.2d at 609; see e.g., *Hood v. Hartford Life & Acc. Ins. Co.*, 567 F.Supp.2d 1221,  
 26 1224 (E.D. Cal. 2008) (granting request for modification that was promptly made when it became  
 27 apparent that compliance with the scheduling order was not possible). In determining "good cause,"  
 28

1 courts also consider the importance of the requested modification, the potential prejudice in allowing  
 2 the modification, and, conversely, whether denial of the requested modification would result in  
 3 prejudice. *Southwestern Bell Tel. Co. v. City of El Paso*, 346 F.3d 541, 546 (5th Cir. 2003) (involving  
 4 amendment of pleadings).

5 Here, good cause exists for an extension of the discovery cut off given the Parties'  
 6 inability to complete necessary discovery. This matter was initially filed on August 11, 2020; however  
 7 Plaintiff did not immediately serve Defendant. By the time Plaintiff served Defendant with her First  
 8 Amended Complaint, and Defendant filed an Amended Answer and the Parties exchanged their Rule  
 9 26(f) disclosures, less than six months remained within the then-existing Scheduling Order's timetable  
 10 to complete all necessary discovery. Even then, the Parties diligently engaged in written discovery  
 11 efforts, including a request that Defendant conduct a search of voluminous ESI, which took several  
 12 months to complete. Once the Parties obtained an extension of the initial discovery deadline, they  
 13 continued to engage in written discovery efforts and they took depositions of available witnesses.  
 14 However, the unavailability of pertinent witnesses (including Plaintiff's former manager) has  
 15 prevented the parties from completing discovery. In addition, the Parties have agreed to submit to  
 16 early mediation and hope to reach a global resolution of this matter, but will need additional time in  
 17 order to complete limited depositions prior to a mediation. If mediation is unsuccessful, the Parties  
 18 will need additional time to conduct further discovery and prepare for trial.

19 **THEREFORE, upon good cause shown**, the Parties stipulate to continue the  
 20 discovery cut off (and related deadlines) out by a minimum of 60 days (which would be February 14,  
 21 2022 for the discovery cutoff).

22 Dated: December 13, 2021

KING & SIEGEL, LLP

23  
 24 /s/ Robert J. King (as approved on 12/13/21)  
 25 JULIAN BURNS KING  
 26 ELLIOT J. SIEGEL  
 27 ROBERT J. KING  
 28 Attorney for Plaintiff  
 SARAH FRAZIER

1 Dated: December 13, 2021

LITTLER MENDELSON P.C.

2  
3 /s/Nathaniel H. Jenkins

4 BARBARA A. BLACKBURN

NATHANIEL H. JENKINS

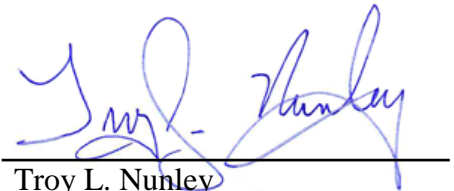
Attorneys for Defendant

5 ULTA SALON, COSMETICS & FRAGRANCE,  
6 INC.

7 **ORDER**

8 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

9  
10 Dated: December 13, 2021

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12 Troy L. Nunley  
13 United States District Judge  
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